

## **RULE 36**

### **ELIGIBILITY AND APPROVAL OF VOCATIONAL REHABILITATION SERVICES**

- A.** Vocational rehabilitation services shall be made available as soon as it has been medically determined that the employee is capable of undertaking such activity and that he or she is unable to perform suitable work for which he or she has had previous training or experience.
- B.** All voluntary vocational rehabilitation plans including on-the-job training, job placement, and formal retraining, must have prior approval of the court's vocational rehabilitation specialists.
  - 1. Notice of all approved or disapproved plans shall be sent to the employee, and either the employer, its insurer or risk management pool, and the vocational rehabilitation counselor.
  - 2. Such employer or insurer or risk management pool shall inform the court within 14 days of the date such notice is sent whether or not it will accept an approved plan and shall concurrently with such acceptance agree to the payment of temporary disability to the employee while he or she is undergoing vocational rehabilitation and making satisfactory progress.
  - 3. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her insurer or risk management pool.

Section 48-165, R.R.S. 1998, and sections 48-121, 48-162.01, 48-163, R.S. Supp., 2002.

Effective date May 12, 2004.

## **RULE 37**

### **NOTIFICATION AND PROGRESS REPORTS**

Words in italics are defined in Rule 49.

- A.** When a vocational rehabilitation counselor is retained for the purpose of evaluating an employee and, if necessary, developing and implementing a

vocational rehabilitation plan the court shall be so notified within five working days. Within 15 days after being retained the vocational rehabilitation counselor shall make initial contact with the employee. Within 30 days after being retained the vocational rehabilitation counselor shall meet with the employee and conduct an interview or assessment.

- B.** Within five working days after the end of each calendar month of service, the vocational rehabilitation counselor shall submit a monthly report showing the activity and type of service(s) provided.
- C.** In all cases involving an approved training plan, the court shall be provided with a copy of the class schedule from the employee at the start of each training period, school term, or grading or evaluation period and shall be provided with a copy of the grade transcript or a training progress report for the employee at the completion of each training period, school term, or grading or evaluation period. Failure of the employee or vocational rehabilitation counselor to provide a copy of the class schedule, grade transcript or a training progress report, or any other data requested by the court may result in a loss of funding or cancellation of the employee's vocational rehabilitation plan.
- D.** When an employee fails to make satisfactory progress or discontinues participating in an approved vocational rehabilitation plan, the court shall be immediately notified by the vocational rehabilitation counselor. The vocational rehabilitation counselor shall also promptly notify the employer or his or her insurer, in writing, when an employee has discontinued participating in an approved vocational rehabilitation plan.
- E.** Upon termination of vocational rehabilitation services or case closure, the vocational rehabilitation counselor shall notify the court within five working days of the reason for the termination or closure and the current employment status of the employee and such other information as the court shall require. A form developed by the court shall be used for this purpose.
- F.** Any reports provided to any party that are prepared by a vocational rehabilitation counselor or job placement specialist acting under the supervision of a vocational rehabilitation counselor shall be provided to all parties, with an additional copy sent directly to the employee.
- G.** Failure of a vocational rehabilitation counselor to comply with the reporting or notification requirements of this rule may cause the certification of

such counselor to be denied, *suspended, revoked*, or placed in a *probationary status*.

Section 48-165, R.R.S. 1998, and sections 48-162.01, 48-163, R.S. Supp., 2002.

Effective date December 19, 2000.

## **RULE 38**

### **VOCATIONAL REHABILITATION COSTS**

- A.** Costs of tuition, books, tools, and such other fees and costs as are deemed appropriate by the court shall be paid directly to the service provider or payor from the Workers' Compensation Trust Fund upon receipt of a training progress report, as required, and proper billing or other appropriate documentation.
- B.** When residence is required at or near the facility or institution away from the employee's customary residence and board and/or lodging is available at the training facility, such costs shall be paid directly to the training facility from the Workers' Compensation Trust Fund upon receipt of proper billing.
- C.** When residence is required at or near the facility or institution away from the employee's customary residence and board and lodging are available at the training facility or institution and the employee elects to utilize local housing in lieu of that available at the training facility or institution, the equivalent of the published cost of the training facility's or institution's board and lodging, but not local travel, may be paid directly to the employee from the Workers' Compensation Trust Fund. Such costs shall be established and approved by the court.
- D.** When residence is required at or near the facility or institution, away from the employee's customary residence and board and/or lodging is not available at the training facility, the reasonable cost of board, lodging and travel will be paid directly to the employee from the Workers' Compensation Trust Fund. Such costs shall be established and approved by the court.
- E.** When it is in the best interests of the employee to commute to and from the facility or institution rather than to reside at or near the facility or institu-

tion the reasonable cost of travel or the equivalent of the reasonable cost of room and board, whichever is lower, may be paid directly to the employee from the Workers' Compensation Trust Fund. Such costs shall be established and approved by the court.

Sections 48-162.01, 48-162.02, 48-163, R.S. Supp., 2002.  
Effective date December 19, 2000.

## **RULE 39**

### **CERTIFICATION OF VOCATIONAL REHABILITATION SERVICE PROVIDERS**

Words in italics are defined in Rule 49.

- A.** In all cases requiring vocational rehabilitation services or a loss of earning power evaluation the services or evaluation shall only be provided by a vocational rehabilitation service provider who has been certified by the court.
- B.** No vocational rehabilitation service provider shall be deemed qualified unless he or she has satisfied the standards for certification established by the court and has been certified by the court.
- C.** The court will certify vocational rehabilitation service providers in the following areas: vocational rehabilitation counselor and job placement specialist.
- D.** A vocational rehabilitation counselor or job placement specialist employed by a state agency providing vocational rehabilitation services and not working as a private vocational rehabilitation service provider shall be exempt from meeting individual certification or renewal of certification requirements for so long as he or she remains employed by such agency and shall be considered qualified and certified to provide vocational rehabilitation services.
- E.** Certification may be denied, *suspended*, *revoked*, or placed in a *probationary status* if the court determines that the provider is not capable of rendering competent vocational rehabilitation services or for any of the following reasons:

1. Failure to comply with the ethical standards and responsibilities established by the court or the generally accepted standards of conduct in the vocational rehabilitation profession.
  2. Conviction of a crime that is reasonably related to professional activities performed in providing vocational rehabilitation services.
  3. Deliberately withholding pertinent information or submitting false or misleading information to any of the parties, another vocational rehabilitation service provider, or the court.
  4. Failure to provide sufficient supporting documentation or deliberately presenting false or misleading information or omitting relevant facts in the application for certification under Rules 40 and 41.
  5. Failure to comply with the reporting or notification requirements of Rule 37.
  6. Failure to comply with the requirements of the Nebraska Workers' Compensation Act or the court's Rules of Procedure.
- F. Certification of a vocational rehabilitation service provider shall not be denied, *suspended*, *revoked*, or placed in a *probationary status* pursuant to Rules 37, 39, 40, or 41 until after he or she has had notice and an opportunity to be heard by a judge of the court. A request by a vocational rehabilitation service provider to be heard by a judge of the court shall not stay operation of the denial, suspension, revocation, or probationary status unless such a stay is ordered by the judge.

Sections 48-162.01, 48-163, R.S. Supp., 2002.  
Effective date December 19, 2000.

## **RULE 40**

### **VOCATIONAL REHABILITATION CERTIFICATION OF COUNSELORS**

Words in italics are defined in Rule 49.

- A. The vocational rehabilitation counselor certification process is designed to ensure individuals working in this specialized area of rehabilitation have attained an acceptable level of education, knowledge, and experience necessary to provide all relevant vocational rehabilitation services to the em-

ployee, and are otherwise capable of rendering competent vocational rehabilitation services to the employee.

- B. For the purpose of the Nebraska Workers' Compensation Act, the vocational rehabilitation counselor, to be eligible for certification, shall meet the required education and/or employment experience. All education and/or experience claimed and used as a basis for certification shall have been attained at the time of application.
  - 1. Acceptable employment experience shall be full-time paid employment as a vocational rehabilitation counselor.
  - 2. Internships, preceptorships, or practica professionally supervised by a vocational rehabilitation counselor—whether paid or unpaid—or acceptable work related experience performed in a professional clinical/agency setting with a state agency providing vocational rehabilitation services, in private practice, or with a private rehabilitation firm may be counted toward meeting the full-time employment experience requirement.
  - 3. Volunteer work experience activities may not be counted toward meeting the full-time employment experience requirement.
- C. Certification shall be for a period of two years, except that certification may be extended for up to 90 days on a *probationary status* at the discretion of the court. To be eligible for certification, the applicant shall present documentary evidence that he/she has attained:
  - 1. A master's or doctoral degree in rehabilitation counseling or rehabilitation administration from an accredited college or university, or;
  - 2. A master's or doctoral degree in a counseling discipline from an accredited college or university, and six months experience as a vocational rehabilitation counselor, or;
  - 3. A master's or doctoral degree in a human services field and 12 months acceptable employment experience as a vocational rehabilitation counselor, or;
  - 4. Designation of Certified Rehabilitation Counselor (CRC) from the Certification of Rehabilitation Counselor Commission (CRCC), or;
  - 5. Designation of Vocational Expert from the American Board of Vocational Experts (ABVE), or;
  - 6. Designation of Certified Vocational Evaluator (CVE) from the Commission on the Certification of Work Adjustment and Vocational Evalu-

ation Specialists (CCWAVES), and 12 months acceptable employment experience as a vocational rehabilitation counselor, or;

7. A bachelor's degree in a human services related field and at least 30 months acceptable employment experience as a vocational rehabilitation counselor, or;
  8. A bachelor's degree in any field (other than human services) and at least 36 months acceptable employment experience as a vocational rehabilitation counselor, and completion of at least nine credit hours of training or course work from an accredited college or university or an equivalent number of contact hours of CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC approved continuing education units in any of the following subject areas:
    - a. Medical (and/or psychological) aspects of disability;
    - b. Counseling theories;
    - c. Individual/Group appraisal;
    - d. Evaluation techniques in rehabilitation;
    - e. Career information;
    - f. Placement process in rehabilitation;
    - g. Utilization of community resources;
    - h. Survey of rehabilitation;
    - I. Loss of earning power evaluations;
    - j. Labor market survey techniques;
    - k. Supervised practicum in rehabilitation.
- D.** An individual desiring certification as a vocational rehabilitation counselor shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. An official college transcript and, if applicable, proof of professional licensure and/or national certification.
  3. A detailed employment history including at a minimum: names, addresses, and telephone numbers of the applicant's employers and immediate supervisors; inclusive dates of employment; and copies of official job descriptions or detailed summaries of job responsibilities for positions intended to meet the required employment experience.

4. Any other information, including supporting documentation, as requested by the court.
- E.** Individuals shall apply for renewal of certification within 60 days prior to the expiration date of their current certification period. If the renewal requirements as provided in Rule 40,F are not satisfied by the expiration date, the individual shall be notified that his or her certification has not been renewed or, where applicable, that certification has been extended on a *probationary status*. If certification is not renewed, either at the normal expiration date or following *probationary status*, the individual's name shall be removed from the directory of certified vocational rehabilitation counselors maintained by the court, and the counselor shall provide no further services in cases subject to the Act. The counselor shall notify the court of all employees for whom services are currently being provided, and a new counselor will be agreed to or appointed pursuant to Rule 42.
- F.** An individual desiring renewal of certification as vocational rehabilitation counselor shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. Documentary evidence that he or she has provided direct client case services during the previous 12-month period.
  3. Documentary evidence that he or she has completed 24 contact hours of continuing education approved by CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC or the court's vocational rehabilitation section. The dates of completion of continuing education hours must fall within the current certification period.
  4. Any other information, including supporting documentation, as requested by the court.
- G.** A counselor whose certification has not been renewed shall reapply for certification in order to provide services under the Act. No such application will be accepted for 90 days from the date of nonrenewal. In order to be eligible for certification after nonrenewal the applicant shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. Documentary evidence that he or she has provided direct client services during the past 12-month period.



3. Documentary evidence that he or she has completed at least 24 contact hours of continuing education approved by CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC or the court's vocational rehabilitation section. The dates of completion of continuing education hours must fall within the 24 months immediately preceding the application for certification.
  4. Any other information, including supporting documentation, as requested by the court.
- H.** Failure to provide sufficient supporting documentation or deliberately presenting false or misleading information or omitting relevant facts in the application may cause certification to be denied, *suspended*, *revoked*, or placed in *probationary status*.

Section 48-165, R.R.S. 1998, and sections 48-162.01, 48-163, R.S. Supp., 2002.

Effective date December 17, 2002.

## **RULE 41**

### **VOCATIONAL REHABILITATION CERTIFICATION OF JOB PLACEMENT SPECIALISTS**

Words in italics are defined in Rule 49.

- A.** The job placement specialist, under the supervision of the vocational rehabilitation counselor, shall be responsible for assisting the employee in returning to gainful employment within the individual's capabilities. In conjunction with the vocational rehabilitation counselor, the job placement specialist shall confirm the employee's job readiness and overall preparation to seek employment.
1. The job placement specialist shall work closely with the employee to identify appropriate potential positions and/or vacancies for which the individual should apply. These positions shall be consistent with the employee's skills, interests, aptitudes, physical limitations and restrictions, and the specific vocational goal(s) listed on the approved vocational rehabilitation plan written by a vocational rehabilitation counselor.

2. The job placement specialist certification process is designed to ensure individuals working in this specialized area of rehabilitation have attained an acceptable level of education and experience necessary to provide all relevant services to the employee, and are otherwise capable of rendering competent job placement services to the employee.
- B.** A vocational rehabilitation counselor or job placement specialist employed by a state agency providing vocational rehabilitation services and not working as a private vocational rehabilitation service provider shall be exempt from meeting job placement specialist certification or renewal of certification requirements for so long as he or she remains employed by such agency and shall be considered qualified and certified to provide job placement services.
- C.** To be eligible for job placement specialist certification, the applicant shall meet the required education and/or employment experience. All education and/or experience claimed and used as a basis for certification shall have been attained at the time of application.
1. Acceptable job placement experience shall be full-time paid employment.
  2. Supervised job placement internships, preceptorships, or practica—whether paid or unpaid—may be counted toward meeting the full-time employment experience requirement.
  3. Volunteer work experience activities may not be counted toward meeting the full-time employment experience requirement.
- D.** Certification shall be for a period of two years, except that certification may be extended for up to 90 days on a *probationary status* at the discretion of the court. To be eligible for certification, the applicant shall present documentary evidence that he/she has attained:
1. A master's degree or higher in rehabilitation placement/job development from an accredited postsecondary institution, or;
  2. A master's degree or higher in a counseling discipline from an accredited college or university, or;
  3. Designation of Certified Rehabilitation Counselor (CRC) from the Certification of Rehabilitation Counselor Commission, or; Rehabilitation Counselor Commission (CRCC), or;
  4. Designation of Vocational Expert from the American Board of Vocational Experts (ABVE), or;

5. Designation of Certified Vocational Evaluator (CVE) from the Commission on the Certification of Work Adjustment and Vocational Evaluation Specialists (CCWAVES), and 12 months acceptable employment experience as a vocational rehabilitation counselor, or;
  6. Designation of Certified Case Manager (CCM) by the Certification of Insurance Rehabilitation Specialists Commission for Case Manager Certification (CCMC) and six months full-time, job placement related experience, or;
  7. Designation of Certified Disability Management Specialist (CDMS) by the Certification of Disability Management Specialists Commission (CDMSC) and six months full-time, job placement related experience, or;
  8. A bachelor's degree in rehabilitation placement/job development from an accredited postsecondary institution and six months full-time, job placement employment experience, or;
  9. An associate degree or higher (in a field other than rehabilitation placement/job development, or counseling) from an accredited postsecondary institution, and 12 months full-time, job placement related experience, or;
  10. A minimum of 36 months full-time job placement related experience.
- E.** An individual desiring certification as a job placement specialist shall submit to the court:
1. A completed application for certification. A form developed by the court shall be used for this purpose.
  2. An official transcript from the postsecondary institution and, if applicable, proof of professional licensure and/or national certification.
  3. A detailed employment history including at a minimum: names, addresses, and telephone numbers of the applicant's employers and immediate supervisors; inclusive dates of employment; and copies of official job descriptions or detailed summaries of job responsibilities for positions intended to meet the required employment experience.
  4. Any other information, including supporting documentation, as requested by the court.
- F.** Individuals shall apply for renewal of certification within 60 days prior to the expiration date of their current certification period. If the renewal requirements as provided in Rule 41,F are not satisfied by the expiration

date, the individual shall be notified that his or her certification has not been renewed or, where applicable, that certification has been extended on a *probationary status*. If certification is not renewed, either at the normal expiration date or following *probationary status*, the individual's name shall be removed from the directory of certified job placement specialists maintained by the court, and the job placement specialist shall provide no further services in cases subject to the Nebraska Workers' Compensation Act. The job placement specialist shall notify the court of all employees for whom services are currently being provided.

- G.** An individual desiring renewal of certification as a job placement specialist shall submit to the court:

  - 1. A completed application for certification. A form developed by the court shall be used for this purpose.
  - 2. Documentary evidence that he or she has provided direct job placement services during the previous 12-month period.
  - 3. Documentary evidence that he or she has completed at least 24 contact hours of continuing education approved by CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC or the court's vocational rehabilitation section. The dates of completion of continuing education hours must fall within the current certification period.
  - 4. Any other information, including supporting documentation, as requested by the court.
- H.** A job placement specialist whose certification has not been renewed shall reapply for certification in order to provide services under the Act. No such application will be accepted for 90 days from the date of nonrenewal. In order to be eligible for certification after nonrenewal the applicant shall submit to the court:

  - 1. A completed application for certification. A form developed by the court shall be used for this purpose.
  - 2. Documentary evidence that he or she has provided direct client services during the past 12-month period.
  - 3. Documentary evidence that he or she has completed at least 24 contact hours of continuing education approved by CCMC/ CDMSC/ CRCC/ CCWAVES/ IARPS/ NBCC or the court's vocational rehabilitation section. The dates of completion of continuing education hours must fall within the 24 months immediately preceding the application for certification.

4. Any other information, including supporting documentation, as requested by the court.
- I. Failure to provide sufficient supporting documentation or deliberately presenting false or misleading information or omitting relevant facts in the application may cause certification to be denied, *suspended*, *revoked*, or placed in *probationary status*.

Section 48-165, R.R.S. 1998, and sections 48-162.01, 48-163, R.S. Supp., 2002.

Effective date December 17, 2002.

## **RULE 42**

### **CHOICE OF VOCATIONAL REHABILITATION COUNSELOR**

- A. If entitlement to vocational rehabilitation services is claimed by the employee, or a loss of earning power evaluation is desired by any party, the selection requirements of section 48-162.01(3) shall apply. The parties shall make a good faith attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors.
  1. Any party may propose the selection of a vocational rehabilitation counselor from the directory.
  2. The proposed vocational rehabilitation counselor shall obtain written agreement of his or her selection from the other party or parties. The vocational rehabilitation counselor may contact the parties directly for this purpose. If agreement is obtained, the vocational rehabilitation counselor shall notify the court of his or her selection pursuant to Rule 37.

Before the selection is made, the vocational rehabilitation counselor must provide written notice to the employee of his or her rights regarding the selection of the vocational rehabilitation counselor. The written notice shall include:

- a. The employee's right to agree to the proposed vocational rehabilitation counselor to provide vocational rehabilitation services;
- b. The employee's right not to agree to the proposed vocational rehabilitation counselor;

- c. The employee's right to propose a vocational rehabilitation counselor of his or her own choosing;
- d. That if the parties are unable to agree on a vocational rehabilitation counselor, the employee may request the court to appoint a vocational rehabilitation counselor at no cost to the employee.

A form developed by the court may be used to provide the required notice to the employee.

- 3. If, after a good faith attempt, the parties are unable to agree on the selection of a vocational rehabilitation counselor, a party shall notify the court, in writing, of the disagreement and shall request that the court appoint a vocational rehabilitation counselor from the directory. This request shall be made using a form approved by the court with the requestor providing copies to all other parties.
  - 4. Within fifteen working days following notification that the parties are unable to agree to the selection of a vocational rehabilitation counselor, a rehabilitation specialist of the court shall select a vocational rehabilitation counselor from the directory and advise the parties of the name of the court appointed vocational rehabilitation counselor.
  - 5. Once the vocational rehabilitation counselor has been appointed by the court, the counselor shall contact all the parties in accordance with Rule 42,C,3 to determine the specific agreed upon services to be provided. Written confirmation of such agreement shall be obtained by the counselor from each of the parties. Services shall be limited to those agreed upon and confirmed in writing by the parties or ordered by the court.
- B.** When assigning a vocational rehabilitation counselor, a rehabilitation specialist of the court shall contact the individual whose name appears at the top or first position of the directory to ascertain if that vocational rehabilitation counselor agrees to accept the assignment, taking into consideration, but not limited to, such factors as timeliness, type of disability, or geographic location.
- 1. If the vocational rehabilitation counselor accepts the assignment, his or her name shall be placed at the end of the directory. The next vocational rehabilitation counselor's name on the directory shall then be moved to the top of the directory.
  - 2. In the event that the vocational rehabilitation counselor is unable or elects not to accept the assignment, the vocational rehabilitation counselor whose name appears next on the directory shall be contacted to determine if he or

she will accept the assignment. This process shall continue until the appointment is finally accepted.

3. Three consecutive refusals or declinations without good cause to accept an assignment shall result in the vocational rehabilitation counselor's name being placed at the end of the directory.
- C. All contact between the vocational rehabilitation counselor and the parties, other than the employee, shall be in writing with copies provided to all other parties, with an additional copy sent directly to the employee, except that the vocational rehabilitation counselor may have direct contact:
1. As provided in Rule 42,A,2;
  2. With the employer to assess the likelihood of the employee being able to return to the previous job with the same employer, or being able to return to the previous job with modifications, or to obtain a new job with the same employer. For purposes of this paragraph "employer" shall not include attorneys, claims representatives, risk management personnel, or similar representatives of the employer, but shall only include that person or persons required to explain what the applicable job entails, and what may be necessary to modify the job;
  3. With all parties when they agree to jointly meet or to conduct a jointly held conference call with the vocational rehabilitation counselor to discuss the case;
  4. For the purpose of taking a deposition;
  5. With the employer or his or her insurer to assist the employee in obtaining special or adaptive equipment necessary for the employee to accomplish an approved vocational rehabilitation plan, or necessary for the purposes delineated in Rule 42,C,2;
  6. With the employer or his or her insurer to assist the employee in determining the status of temporary disability benefit payments while undergoing an approved vocational rehabilitation plan;
  7. With the employer or his or her insurer to assist the employee in arranging for necessary specialized or acute medical care while the employee is participating in an approved vocational rehabilitation plan.
- D. The vocational rehabilitation counselor chosen or selected pursuant to this rule shall be the sole vocational rehabilitation counselor to provide vocational rehabilitation services or to perform a loss of earning power evaluation at any one time.

- E. If an employer received notice of injury before January 1, 1994, the employee may continue to receive vocational rehabilitation services from the vocational rehabilitation counselor selected prior to that date. Any change of vocational rehabilitation counselor requested on or after January 1, 1994 shall be pursuant to Rule 43.
- F. The parties, other than the employee, shall not attempt to influence or to control the meeting place, the outcome of the evaluation, or the recommendations of the vocational rehabilitation counselor. The meetings shall be held at a neutral site, except as provided in Rule 42,C.

Sections 48-162.01, 48-163, R.S. Supp., 2002.  
Effective date October 27, 1998.

## **RULE 43**

### **CHANGE OF VOCATIONAL REHABILITATION COUNSELOR**

- A. While either party may retain a vocational rehabilitation counselor for rebuttal purposes at its own expense, only one vocational rehabilitation counselor may provide vocational rehabilitation services or perform a loss of earning power evaluation at any one time.
- B. A change in the vocational rehabilitation counselor providing vocational rehabilitation services to or performing a loss of earning power evaluation on an employee may be requested by the employee or the employer or his or her insurer. This change shall only be made after approval has been obtained from the court.
  - 1. The party desiring a change in vocational rehabilitation counselor must submit the request in writing to the court, using a form approved by the court with copies to all other parties.
  - 2. The request shall identify the names and addresses of the current and proposed vocational rehabilitation counselor, if known, and the specific reasons for the requested change.
  - 3. A rehabilitation specialist of the court will review the request and either approve or deny the request within fifteen working days.
    - a. If the rehabilitation specialist of the court does not concur with the requested change, the rehabilitation specialist will notify all parties of



the denial and the reasons for rejecting the requested change. When a change request is not approved, vocational rehabilitation services must be continued with the previously agreed upon or appointed vocational rehabilitation counselor.

- b. If the rehabilitation specialist of the court determines that a change in vocational rehabilitation counselor should be approved, the rehabilitation specialist will notify the employee, the employer or his or her insurer, and the current counselor of that decision.
- 4. If, within 30 days of notification that the request for change in vocational rehabilitation counselor has been approved, both parties are unable to agree on a new vocational rehabilitation counselor, the employee or employer or his or her insurer must notify the court, and a rehabilitation specialist of the court will select the new counselor from the directory in accordance with Rule 42,B.
- 5. If, after 30 days of notification that the request for change in vocational rehabilitation counselor has been approved, the court has not been notified of the selection of a new vocational rehabilitation counselor or that both parties are unable to agree on the selection of a new vocational rehabilitation counselor, the rehabilitation specialist of the court may either appoint the vocational rehabilitation counselor initially proposed by the party requesting the change or appoint a vocational rehabilitation counselor from the directory in accordance with Rule 42,B. The rehabilitation specialist of the court will then notify the employee, the employer or his or her insurer, and the new counselor of the appointment.
- C. Once a change of vocational rehabilitation counselor has been accomplished, the previous vocational rehabilitation counselor shall provide any and all pertinent information in the previous vocational rehabilitation counselor's possession to the newly appointed vocational rehabilitation counselor except for such information that may be legally considered proprietary in nature.
- D. Once a change of vocational rehabilitation counselor has been accomplished, the newly appointed vocational rehabilitation counselor shall contact all the parties in accordance with Rule 42,C,3 to determine the specific agreed upon services to be provided. Written confirmation of such agreement shall be obtained by the counselor from each of the parties. Services shall be limited to those agreed upon and confirmed in writing by the parties or ordered by the court.

Sections 48-162.01, 48-163, R.S. Supp., 2002.

Effective date April 25, 2002.

## **RULE 44**

### **VOCATIONAL REHABILITATION PLAN DEVELOPMENT AND IMPLEMENTATION**

- A.** The vocational rehabilitation counselor voluntarily chosen or appointed shall perform the unbiased and accurate evaluation, development, submission, and implementation of the employee's vocational rehabilitation plan.
  - 1. When required, the vocational rehabilitation counselor shall evaluate the employee's vocational interests, aptitudes, skills, and physical, psychological, and psychosocial abilities. In addition to reviewing medical data or consulting with medical and/or mental health professionals, the vocational rehabilitation counselor may obtain the data via interviews, review of medical, diagnostic, psychometric, and related information describing the individual's injury and functional capabilities.
  - 2. When required, the vocational rehabilitation counselor or other qualified personnel under the supervision of the vocational rehabilitation counselor shall perform transferable skills analyses, labor market surveys, utilization of occupational and employment information, and on-the-job evaluations (including real or simulated work activity determinations), administering and/or interpreting psychometric and/or vocational testing (to include standardized interest, aptitude, achievement, and specific skills tests).
- B.** The vocational rehabilitation counselor voluntarily chosen or appointed shall evaluate the employee to determine what vocational rehabilitation services, if any, may be needed to assist the employee to return to suitable employment.
  - 1. The vocational rehabilitation counselor shall follow the priorities pursuant to section 48-162.01 in evaluating the employee and developing a rehabilitation plan. No formal retraining plan shall be submitted to the court unless the vocational rehabilitation counselor certifies that all lower priorities have been determined to be unlikely to result in a suitable job placement or return to work opportunity for the injured employee.
  - 2. No higher priority may be utilized unless the vocational rehabilitation counselor has determined that all lower priorities would unlikely result in the job placement or return to work of the injured employee. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized.
  - 3. The following priorities are listed in order from lower to higher priority.

- a. Return to the previous job with the same employer;
  - b. Modification of the previous job with the same employer;
  - c. A new job with the same employer;
  - d. A job with a new employer;
  - e. A period of formal retraining which is designed to lead to employment in another career field. This is designed to prepare the employee for suitable employment in another occupation. Formal retraining shall be applicable to the specific vocational goal listed on the proposed vocational rehabilitation plan and shall be appropriate and necessary to enable the employee to obtain employment in the proposed occupation.
- C.** Only certified vocational rehabilitation counselors shall develop vocational rehabilitation plans. When the vocational rehabilitation counselor determines the injured employee will be unable to return to suitable employment without the provision of vocational rehabilitation services, the vocational rehabilitation counselor shall develop a vocational rehabilitation plan and submit it directly to the court. The plan shall list the specific vocational goal, the specific types of services and estimated costs necessary to meet the specific vocational goal.
- D.** All proposed rehabilitation plans and amendments shall be submitted on a vocational rehabilitation plan form developed by the court. Copies of all psychometric testing results, including but not limited to academic, achievement, vocational, and interest tests, and vocational evaluation summaries shall be provided with the vocational rehabilitation plan when submitted to the court. Vocational rehabilitation counselors shall provide detailed justification for all training, services and related costs listed on the vocational rehabilitation plan.
- E.** The fee of the vocational rehabilitation counselor for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid for by the employer or his or her insurer. Such fee shall include expenses for job placement services provided by the vocational rehabilitation counselor as well as expenses for a certified job placement specialist or an interpreter when necessary to assist the vocational rehabilitation counselor in the performance of his or her duties. Any such job placement specialist or interpreter shall be selected by the vocational rehabilitation counselor.

Section 48-165, R.R.S. 1998, and sections 48-162.01, 48-163, R.S. Supp., 2002.  
Effective date October 27, 1998.

## **RULE 45**

### **LOSS OF EARNING POWER EVALUATION**

- A.** Loss of earning power evaluations shall be performed by private vocational rehabilitation counselors whose names appear on the approved directory established by the court.
- B.** If the parties cannot agree on the choice of a vocational rehabilitation counselor from the directory to perform the loss of earning power evaluation, the parties shall request the court to assign a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors pursuant to the procedures outlined in Rule 42.
- C.** The fee of the vocational rehabilitation counselor for the loss of earning power evaluation shall be paid by the employer or his or her insurer. Such fee shall include expenses for an interpreter when necessary to assist the vocational rehabilitation counselor in the performance of his or her duties. Any such interpreter shall be selected by the vocational rehabilitation counselor.

Sections 48-162.01, 48-163, R.S. Supp., 2002.  
Effective date October 27, 1998.

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